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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,689	07/03/2003	Eric Chalendar	D-7871	7323

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MeadWestvaco Corporation  
Law Department  
4850D North Church Lane  
Smyrna, GA 30080

EXAMINER
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HARMON, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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06/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/613,689

Applicant(s)

CHALENDAR ET AL.

Examiner

Christopher R. Harmon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-26,28-43 and 45-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-26,28-43 and 45-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The amendment with respect to the specification has been entered.

#### ***Priority***

2. As noted in the previous actions of 6/2/06 and 10/31/05, the claim for priority has not been perfected.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 19-24, 26, 28-29, 31-33, 37-41, 43, 45-46, and 48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Ganz (US 3,848,519).

Ganz discloses an apparatus for packaging an array comprising article conveyor 12; packaging material conveyor 14 for conveying packaging material in a perpendicular direction (downward) to the article conveyance direction; packaging material accelerators 28L and 28R adapted and synchronized to receive the individual packaging materials from conveyor 14 and place over array of bottles b on conveyor 12; compression mechanism 106; control system/drive mechanism that synchronizes the conveyors; see figure 1. The packaging materials have cells for holding articles b; see figure 15. Regarding the control system/drive mechanism Ganz clearly discloses mechanical means for controlling the elements including chains 34; sprockets 70-73; drive shaft 74; etc. see column 5, lines 50+.

The process is continuous therefore erecting elements 30 disposed adjacent conveyor 14 are adapted for erecting cells during packaging material conveyance by packaging material conveyor 14. Erecting elements include reciprocating element 110 which engages portion km of the packaging and travels on a curvilinear path. This path is considered both circular and oval shaped; see figure 1.

Regarding claims 26 and 43, packaging material conveyor 14 is positioned in an overlapping configuration with packaging material accelerator 28.

Regarding claims 28 and 45, note that while features of an apparatus may be recited either structurally or functionally, claims directed towards an apparatus must be distinguished from the prior art in terms of structure rather than function. See *In re Schreiber*, 128 F.3d 1473-78, 44 USPQ2d 1429-32 (Fed.Cir. 1997) and *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed.Cir. 1990). The velocities specified are more appropriate for a process claim. The examiner takes the position that the separate assemblies of the invention to Ganz are fully capable of being run at different velocities if desired.

5. Claims 19-23, 26, 28-33, and 54-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenwell et al. (US 5,862,648).

Greenwell et al. disclose an apparatus for placing celled packaging material P relative to an array of articles traveling in a first direction at a first velocity on a conveyor 23; packaging material conveyor 12 comprising paired chain conveyors with lugs 20 and 21 synchronized with packaging material accelerator comprised of belts 65, 66 to accelerate packaging material in a second (vertical) direction perpendicular to the first

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direction; see figure 1, column 5, lines 55+. Reciprocating erecting elements 41 and 42 are disposed adjacent the packaging material conveyor 12 and travel in circular paths.

Regarding claims 26 and 43, the configuration of the terminal portion of the conveyor and accelerator is considered in a staggered overlapping relationship; see figure 1.

Regarding claims 31 and 48, compression mechanism 46 is utilized to position the placed packaging material downwardly; see column 4, lines 10+.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Greenwell et al. (US 5,862,648).

Greenwell et al. do not directly disclose an oval shaped path for the erecting elements to follow, however the Examiner takes Official Notice that cam structures are common in the art for providing oval rotational paths for reciprocating elements. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to include a cam mechanism to provide an oval path for the erecting elements because Applicant has not disclosed that an oval path provides an advantage, is used for a particular purpose, or solves a stated problem.

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One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a circular path.

8. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519) or Greenwell et al. (US 5,862,648) in view of Ford (US 5,626,002).

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519) in view of Ford (US 5,626,002).

Ganz or Greenwell do not directly disclose an adhesive mechanism but rather an interlocking tab construction. Ford discloses both the use of adhesive and interlocking tab and hole construction for securing panels of carrier packaging materials; see column 2, first paragraph. It would have been obvious to one of ordinary skill in the art to include an adhesive applicator as taught by Ford in the invention to either Ganz or Greenwell et al. for securing panel members during the erection procedure.

9. Claims 30 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519) in view of Konzal et al. (US 4,819,411).

Ganz discloses endless chains 34 having a working reach terminating proximate article conveyor 12; see figure 1. Because of applicant's traversal of the previously asserted common knowledge modification that endless chains can be replaced with belts on a conveyor Konzal et al. is relied upon for a direct teaching. Note Konzal et al. disclose the alternative of endless chains and belts 282 of a conveyor 280; see column 7, lines 42+.

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It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the endless chains of Ganz with endless belts as taught by Konzal et al. for carrying the engaging elements of the packaging material accelerator.

10. Claims 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519) or Greenwell et al. (US 5,862,648) in view of Buckingham et al. (US 4,237,676). Claims 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519) in view of Buckingham et al. (US 4,237,676).

Ganz or Greenwell et al. do not directly disclose a packaging material detector or an article array position detector however in a similar automated packaging device Buckingham et al. disclose packaging arrays of bottles using a control system comprising packaging material detector/photocell P1; detector head/array detector (not shown); see column 10, lines 51+. These are run by a control system/controller as are the conveyors of Ganz. Whether or not Buckingham et al. disclose a central processor is moot due to Applicant's previous admission that central processors and input means are well known devices in this environment; see Non-Final Rejection of 10/31/05; note also Greenwell discusses the use of a programmable system for synchronization, column 8, lines 41+.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the control system with sensors of Buckingham et al. in the invention to either Ganz or Greenwell et al. for increased precision and elimination of defective packages.

***Response to Arguments***

11. Applicant's arguments filed 5/1/07 have been fully considered but they are not persuasive. The arguments presented seem to be repeated as in the previous response. With regard to the specifics of every claim note the claimed limitations of the rejected claims are addressed per section above. The burden is on the applicant to specifically point out what limitations of the claims are not met as rejected by the examiner. Applicant has failed to distinguish the claims of the present invention over the prior art as detailed above.

With respect to Ganz, elements 28L and 28R act as accelerators of products delivered from conveyor 14 as portions are gripped and manipulated in a perpendicular direction of the first direction of travel. This manipulation causes opening of the products and is considered accelerating those portions manipulated. Applicant has not distinguished the accelerator over the accelerator of Ganz.

Note that during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 320,322 (Fed. Cir. 1999). In determining the patentability of claims, the PTO gives claim language its broadest reasonable interpretation" consistent with the specification and claims. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See MPEP § 904.1.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the erecting mechanism be separate and apart from the package material



accelerator) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to claims 28 and 45, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language such as "adapted to" that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. Note that a limitation directed to an intended use of an apparatus or a process requires a structural difference or a manipulative difference between the claimed invention and the prior art. See *In re Otto*, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963); *In re Sinex*, 309 F.2d 488, 492, 135 USPQ 302, 305 (CCPA 1962); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). Thus the intended velocity of the operation is not considered a limiting factor as the invention to Ganz is considered fully capable of being controlled as claimed. It is noted that the operation as disclosed of Ganz is synchronized ie. package material conveyor 14 and accelerators 28L and R in order to function properly however does not invalidate the capability of the invention to function differently if so intended by a user.

Regarding applicant's confusion with regard to the relevance to the packaging cells, see claim 19, last line etc.

Note that a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. While evaluating obviousness, one must

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ask whether the improvement is more than the predictable use of prior-art elements according to their established functions; see *KSR Int. v. Teleflex 550 US\_\_* (2007).

To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art; *ibid.*

The analysis need not seek out precise teachings directed to the challenged claimed specific subject matter, for a court can consider the inferences and creative steps a person of ordinary skill in the art would employ. Under the correct analysis, any need or problem known in the field and addressed by the patent can provide a reason for combining the elements in the manner claimed; *ibid.*

In this case, tab and opening construction in respective panels and glued panels are merely well known alternative closing structures in the art. One does not necessarily teach away from the other as one of ordinary skill would easily recognize the different positive and negative aspects of either closure system. Konzal furthermore teaches an alternate use of belts and chains. Even if the element is the same in Konzal then the terms themselves are shown to be interchangeable and therefore read on the claims.

Regarding the previously recognized admission (Applicant's admitted prior art) the arguments are untimely. See MPEP 2144.03(c).

### **Conclusion**

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12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

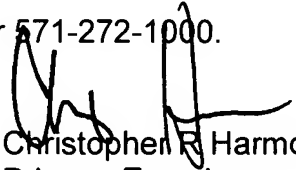
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christopher R. Harmon  
Primary Examiner  
Art Unit 3721